

**CRIMINAL POSSESSION OF A WEAPON
IN THE THIRD DEGREE
(Possession of Weapon;
Previous Conviction)
Penal Law § 265.02(1)
(Committed on or after Sept. 1, 1974)**

No charge has been prepared for this offense, which elevates the crime of fourth degree weapon possession under Penal Law §§ 265.01(1), (2), (3), or (5) to a felony when the defendant "has previously been convicted of any crime."

The aggravating element must be charged in a special information, and after the commencement of trial the defendant must be arraigned on the special information. If, upon such arraignment, the defendant admits the element, the court must not make any reference to it in the definition of the offense or in listing the elements of the offense. But if the defendant denies the element or remains mute, the court must add the element to the definition of the offense and the list of elements. CPL 200.60. *See People v. Cooper*, 78 NY2d 476 (1991).

For the basic charge, see the charge for Criminal Possession of a Weapon in the Fourth Degree under Penal Law §§ 265.01(1), (2), (3), or (5).